Rc200137
NOx SIP Call
February 7, 2001

TITLE 326 AIR POLLUTION CONTROL BOARD

#00-137(APCB)

On December 1, 2000, IDEM published draft rules for the reduction of nitrogen oxide (NO_x) emissions from certain industrial sources. In response to the publication of the Second Notice of Comment Period, IDEM received over three hundred (300) letters from the regulated industry and concerned citizens, including many received after the comment period deadline.

This document includes a list of comments submitted by the January 2, 2001, deadline, a summary of the issues and questions raised in those comments, and the department's response. Comments submitted after the comment period deadline are not listed or summarized here, but few, if any, issues were raised in the late comments that were not also addressed in comments submitted by the deadline. IDEM appreciates the great amount of interest expressed by the public in this rulemaking and the many thoughtful suggestions commenters have provided.

There are many complex technical and policy issues raised in this rulemaking. In this Response to Comments and in the draft rule language IDEM is issuing in advance of the February 7, 2001, air pollution control board meeting, IDEM has tried to address as many comments as possible, while staying mindful of the fact that Indiana's rule must ultimately be approved by U.S. EPA as consistent with the federal NO_x control program. While attempting to advance the debate and begin to narrow the list of issues still under discussion, IDEM has included draft rule language on a number of controversial issues. We fully expect that the public debate on those issues will continue after the February 7 air pollution control board meeting.

Following is a summary of how the draft rule language addresses the various issues related to the trading budget.

<u>The Trading Budget</u>

Since the Second Notice was published, IDEM has had discussions with U.S.EPA about the trading budget, especially for nonEGUs. IDEM has also considered a number of issues related to the allowance allocation formula. This issue has been the subject of many of the comments from the public and regulated sources, and raises a number of policy issues. Key issues related to the budget include:

- **$** How large is the EGU trading budget? How large is the nonEGU trading budget?
- **$** Should the budgets be kept separate for distribution to EGUs and nonEGUs or should they be combined?
- **$** Whether, and how many, tons should be set aside from the EGU and the nonEGU totals for distribution to new sources?

- **$** Whether, and how many, tons should be set aside from the EGU and the nonEGU totals for distribution to energy efficiency or renewable energy projects (EE/RE)?
- **$** Should units that are currently shut down, but operated at some point during the 1995-9 period on which allocations are based, be allocated allowances for the first allocation period?
- **$** Should the allocations be based on a straight emission rate (.15 lb/mmBtu for EGUs and .17 lb/mmBtu for nonEGUs) regardless of a unit's historical or allowable emission rate, or should the allocations be based on the stricter of those rates?
- **$** Using U.S.EPA's methodology for allocations, some units do not need to control and in fact would receive allocations in excess of what their expected emissions are. Should those "excess" allowances be allocated to those units or should they be used to offset costs for companies that will have to install controls under the rule, or for new sources?

IDEM expects further discussion on these issues, but has laid out in this draft rule an approach for distributing the total trading budget.

Based on U.S. EPA and IDEM's calculations, Indiana's trading budget is as follows:

	EGUs	**nonEGUs**
Trading budget	45952 tons	11107 tons
New source set aside	2298 (5% for 2004-6) [919 (2% after 2006)]	111 (1%)
EE/RE set aside		1141 (2% of total trading budget)
Tons available for distribution to existing sources	43654 (2004-6) [45033 (after 2006)]	9855

Allocations. The draft rule states that for the first allocation period (2004-6), existing EGUs will receive allowances based on the average of each unit's highest two years of heat input between 1995-1999 multiplied by .15 lb/mmBtu or their allowable emission rate, whichever is more stringent. Any allowances left after this distribution is made are distributed to all EGU units pro rata.

For the first allocation period, existing nonEGUs will receive allowances based on the average of each unit's highest two years of heat input between 1995-1999 multiplied by .17 lb/mmBtu or the unit's "baseline emission rate," whichever is lower. The baseline emission rate is the unit's average ozone season emission rate for the period 1995-1999. As with the EGUs, any allowances left over after the initial distribution is made are distributed to all nonEGU units pro rata. Because of the wide range in

emission rates among Indiana's nonEGUs (some operate at an emission rate considerably above U.S. EPA's presumptive .17 lb/mmBtu and others considerably below), the result is that some sources will be required to install control equipment and/or purchase allowances and others will receive allowances in excess of what they need to operate and be able to sell or trade them. IDEM will continue to evaluate the allocation methodology for these sources to provide as fair and cost-effective a system as possible.

One way to address the issue of the potential disparity in allocations to nonEGUs is to use the more stringent emission rate to determine allowances as the draft rule states. Sources that have historically operated at a level below U.S. EPA's presumptive rate or are limited by a permit to a lower rate will not incur the costs of installing control equipment and would deriving a pure economic benefit from the rule. Distributing those allowances to sources that will be required to install control equipment helps lower the costs of those controls to the companies and, ultimately, to consumers. Another approach would be to use a different (higher) presumptive emission rate for calculating allowances for units whose actual emission rate is substantially higher than 0.17 lb/mmBtu and for whom meeting the 0.17 lb/mmBtu emission rate would require greater than sixty percent (60%) reduction in emissions. IDEM welcomes specific comment on this issue.

IDEM's approach includes the distribution of allowances to shut down units, as long as they operated at least one season during the 1995-1999 period. This approach is similar to the treatment of retired units in the rule, whereby a shut down or retired unit continues to receive allowances until it no longer appears as an operating unit in the period IDEM uses to determine allocations in future periods.

New source set-aside. IDEM has recommended that a single set-aside pool for new sources (both EGU and nonEGU) be created. New sources would apply each December for allowances to be used in the upcoming ozone season until the units can use allowances as an existing unit. Having an annual application process assures that all new sources have an equal opportunity to seek allowances and avoids a situation where the new sources that are "first in line" receive all the allowances leaving none for new sources in subsequent years. Having a single pool means that set-aside allowances will not go unused if there are not sufficient new projects in either the EGU or nonEGU category. IDEM has proposed the size of the new source set aside by balancing information about new projects that are in the application process now, historical trends of growth, and expected costs of the control program for existing sources.

Energy Efficiency/Renewable Energy set-aside. IDEM has included a set-aside pool for EE/RE projects in an amount equal to two percent (2%) of the trading budget. This amount is considered more than sufficient in the first years of this program to provide incentives for innovative energy saving

projects. Any tons not allocated for a given ozone season would become available for new sources seeking allowances for that season. IDEM believes that there is flexibility in the nonEGU budget to permit dedicating these tons to EE/RE projects without increasing costs to nonEGUs over what they would have been without the set-aside.

Compliance Supplement Pool

Another issue of great interest to commenters is the compliance supplement pool (CSP). In the Second Notice of Comment Period, IDEM had proposed to partition the CSP between EGUs and nonEGUs and reserve a portion for demonstration of need. The draft rule now provides a single pool for all sources. Up to fifty percent (50%) of the CSP would be available for early reduction credits generated in 2002 and the remaining amount would be available for credits generated in 2003 and demonstrations of need.

IDEM will continue to discuss these issues, as well as others addressed in detail in the remainder of this document, with interested parties as the rulemaking process continues.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from December 1, 2000, through January 2, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Aluminum Company of America	(ALCOA)
American Electric Power	(AEP)
Bradley D. Barhyatt	(BDB)
Denise L. Benson	(DLB)
Bethlehem Steel Corporation	(BSC)
Stephanie Bode	(SB)
Shirley J. Carr	(SJG)
Cinergy Corporation	(CIN)
Citizens Action Coalition of Indiana	(CACI)
Citizens Thermal Energy	(CTE)
Clean Air Action Corporation	(CAAC)
Heather Cox	(HC)
EnviroPower of Indiana	(EPI)
John Everitt	(JE)
Chet Foster	(CF)

Mark Grable	(MG)
Kim Grayson	(KG)
George Grosskopf	(GG)
Lori Hall	(LH)
Bill Hayden	(BH)
Laura A. Henderson	(LAH)
Amy Holly	(AH)
Hoosier Energy REC, Incorporated	(HE)
Hoosier Environmental Council	(HEC)
Joseph and Donna Huber	(JDH)
Indiana Coal Council, Incorporated	(ICC)
Indiana Division-Izaak Walton League of America	(IWLA)
Indiana Manufacturers Association	(IMA)
Indiana Municipal Power Agency	(IMPA)
Indiana Petroleum Council	(IPC)
Indiana-Kentucky Electric Corporation	(IKEC)
Indianapolis Power and Light	(IPL)
Ispat Inland Incorporated	(III)
Lisa Jackson	(LJ)
Gary Kah	(GK)
Jenine Kemp	(JK)
Judy Kreger	(JK)
Don Landers	(DL)
Allen R. Lauer, Senior	(ARL)
Mike Leckrone	(ML)
Jodi Liebeno	(JL)
Nancy Little	(NL)
B. J. Loudreth	(BJL)
LTV Steel Company, Incorporated	(LTV)
Deanna Maddox	(DM)
Barbara McGraw	(BM)
Midwest Independent Power Suppliers Coordination Group	(MWIPS)
Scott Montgomery	(SM)
Natural Resources Defense Council	(NRDC)
NiSource	(NS)
Kim Pallikan	(KP)
Mary K. Paynter	(MKP)

Kelli Polloch	(KPH)
Alan Ponto	(AP)
Primary Energy, Incorporated	(PEI)
Purdue University	(PU)
Richmond Power and Light Company	(RPL)
Brad Roberts	(BR)
Phillip and Jean Ross	(PJR)
Donna Runkle	(DR)
Carole Rust	(CR)
Jeff Ryan	(JR)
Save the Dunes Council	(SDC)
Save the Valley	(STV)
Sierra Club-Hoosier Chapter	(SCHC)
Melvin L. Smith	(MLS)
LaCinda Sohalski	(LS)
State Line Energy	(SLE)
Tim Stelle	(TS)
Marti Steussy	(MS)
Cindy Stone	(CS)
Jeff and Sue Testin	(JST)
Konda Thomas	(KT)
U.S. Steel Group	(USS)
John Ulmer	(JU)
Valley Watch, Incorporated	(VWI)
Vectren Corporation	(VC)
Roger Voelker	(RV)
E. M. Whirter	(EMW)
Indiana Electric Utility Air Work Group	(IEUAWG)
Pike County Economic Growth Council	(PCEGC)
Vanderburgh County Department of Health	(VCDH)

Following is a summary of the comments received and IDEM's responses thereto.

Trading Program - General

Comment: IDEM should adopt a NO_x trading program consistent with U.S. EPA's model trading program in the NO_x SIP call. The following limitations should be included in the program:

• Automatic inclusion in the program for electric utility boilers and large industrial boilers.
• No broadening of the program to include smaller and less-well monitored stationary sources and mobile sources.
• No opt-in provisions for smaller and less-well monitored sources.
• No expansion of the program to allow for inter-pollutant trading between NO_x, volatile organic compounds (VOCs) or any other pollutant. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: The draft rules include a trading program that affects utility and large industrial boilers and does not allow for inter-pollutant trading. The program does allow for other units to opt-in to the program as long as the same monitoring requirements are followed.

Comment: IDEM should require a very large proportion of the NO_x emission reductions from the electric power sector. U.S. EPA's analysis demonstrates that the emission reductions can be achieved more reliably and at lower cost from this sector than in other sectors. In addition, the emission limit should be expressed as an firm emission tonnage cap to prevent erosion of air quality benefits due to growth in electric power generation. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: The draft rule includes U.S. EPA's model NO_x trading program that establishes a cap or budget for electric generating and large industrial units and significant emission reductions will be needed from utility sources to meet the NO_x budget.

Comment: Purdue supports the implementation schedule in the rule that sets the first year as a four (4) month program, while setting allocations on the basis of a five (5) month program. This allows for more flexibility in the first year. (PU)

Response: IDEM appreciates the support.

Comment: IDEM should work to develop a NO_x rulemaking that adheres to the federal requirements as they relate to any NO_x budget. (ALCOA)

Response: The draft rule language proposed by IDEM is consistent with U.S. EPA's budget.

Comment: IDEM should combine the EGU and nonEGU budgets and allocate the allowances from the combined NO_x budget, and not according to whether a unit is within the EGU or nonEGU subsets. (MWIPS) (EPI)

Response: IDEM does not believe the budgets should be combined for allocations to existing sources, but has proposed combining the new source set-asides. Maintaining separate budgets is the fairest way to distribute the allowances to ensure both EGUs and nonEGUs achieve reductions in the most cost-effective way. Any excess allowances in the budget may be used for new source set-asides, other policy objectives such as to encourage energy efficiency or renewable energy projects or may be

made available in the market.

Comment: IDEM should maintain a program that allows interstate trading. (III)
Response: The trading program included in the draft rule is a regional trading program administered by U.S. EPA.

Comment: IDEM should allow NO_x allocations under this rule to be used for NO_x offsets under 326 IAC 2-3. (III)
Response: In the NO_x SIP call, U.S. EPA indicated that it believed the trading program could be used to obtain NO_x offsets (63 FR 57475), but identified issues with the integration of the programs. One issue is the requirement to obtain offsets from certain geographic areas. U.S. EPA stated that it will evaluate the issues and provide guidance on the integration of the programs.

Comment: IDEM should include language in the rule that would allow non-budget sources that make verifiable and quantifiable reductions to receive allowances equivalent to those reductions. Other states have taken this approach to increase flexibility and cost savings. This is not an opt-in, in that, the sources would not choose to be regulated, but rather a voluntary program. This program would allow for greater reductions from non-budget sources that could be used to provide more flexibility for budget sources. (CAAC)
Comment: IDEM should bring other source categories such as mobile and area sources into the NO_x budget trading program. By doing so, the trading program would provide additional flexibility for affected sources to obtain early reduction credit relief while installing NO_x emission controls to comply with the NO_x SIP call requirements. (IPL) (VCDH)
Response: U.S. EPA requested comment concerning mobile and area sources and allowing them in the trading program. Due to the comments received and the issues raised, U.S. EPA decided not to include these categories in the trading program. IDEM agrees with the principle that broadening the trading program to allow other sectors to participate on a voluntary basis could provide an incentive for cost-effective NO_x reductions that would lower the overall costs of this program. IDEM has taken the first step in this direction by including a provision for sources to opt in as trading units, but recognizes that only certain types of sources will meet U.S. EPA's criteria. Some states already have trading programs in place and propose to use existing regulatory mechanisms as a way for sources that cannot opt in under U.S. EPA's rules to participate in the trading program. IDEM will continue to work with interested parties to identify additional reductions that may be used in the trading program.

Comment: The draft rule lacks a valid scientific basis as required by IC 13-7-1-3 and there is concern that scientific knowledge regarding ozone transport does not support this rule. Previous correspondence from IDEM seems to indicate the department has shared this concern. It is unclear

whether IDEM is adopting a new position about the level of controls or simply responding to U.S. EPA regulatory mandates. If IDEM is not taking a new position about the levels of control that can be demonstrated by any available science, then this should be made known. If IDEM has undertaken a new evaluation of the scientific merits of the rule and has independently concluded that the proposed control level is necessary, there are a number of concerns with the modeling and the scientific and statistical validity of U.S. EPA's estimates. IDEM should make clear whether it is taking a new position or simply following U.S. EPA mandates. (IPL)

Response: IDEM continues to believe that significant reductions of NO_x emissions are needed, as supported by the regional modeling performed by the Lake Michigan Air Directors Consortium (LADCO). Since the D.C. Circuit Court of Appeals has upheld the SIP call, IDEM also has a regulatory requirement to respond to the SIP call.

Comment: IDEM should include language that addresses how necessary local NO_x reductions can be achieved should it be found after implementation that a source complying with the rule by buying credits is causing a local ozone problem. (VCDH)

Response: U.S. EPA and IDEM believe that the stringency of this rule and the other emission requirements that sources must comply with will not lead to a single source causing a local ozone problem. It is extremely unlikely that even with the trading program any source in Indiana could increase its NO_x emissions from current levels. IDEM has conducted air quality modeling analyzing several possible control scenarios, assuming that sources will control where it is most cost-effective to do so and that sources will acquire allowances where that is most cost-effective. The modeling does not show that there will be adverse air quality impacts in any particular geographic area in Indiana.

Applicability

Comment: The exemption for units that accept a federally enforceable limit to restrict emissions below twenty-five (25) tons per ozone control period is supported. However, the current language in the draft rules is too restrictive and does not recognize equally effective mechanisms for limiting seasonal NO_x emissions. Sources that want to make use of the exemption should be allowed to use any means normally used in new source permitting to obtain synthetic minor permits, including restrictions on fuel consumption. The exemption could also include a restriction on actual tons of emissions where a source commits to using a continuous emissions monitoring system (CEMS), if the installation of the system would be cost effective. A failure to include at least a fuel consumption limitation option would be patently unfair to these sources. (AEP) (IEUAWG) (HE) (IMPA) (NS) (VC)

Comment: IDEM should expand the twenty-five (25) ton exemption to units that combust coal. The emissions from these units can be monitored using current fuel sampling and analysis with records of fuel use. In addition CEMS may also be used, but since the data would not be used under

the trading program, there is no reason to impose the stringent requirements under 40 CFR 75. (CTE)

Response: IDEM agrees the U.S. EPA model language is restrictive and more equally reliable ways to estimate potential to emit exist. IDEM has included language in the draft rule under 326 IAC 10-4-1(b)(3) that would permit other methodologies to be used. However, in discussions to date, U.S. EPA has not indicated a willingness to allow approval for any language other than its own. IDEM will continue to work with U.S. EPA on this issue.

Comment: We do not support an exemption for very clean units. Such an exemption would hinder the development of the allowance trading market. (IEUAWG) (HE) (VCDH) (VC)

Comment: IDEM should include an exemption for units with emission rates significantly below the targeted levels. Exempted units would have to accept an enforceable emission limit below the standard, for example seventy-five percent (75%) of the target level, and demonstrate compliance through stack testing. We would also propose that any allowances above the emission limit, twenty-five percent (25%), would be retired or used for other purposes. (BSC) (USS)

Response: IDEM understands the objection to this exemption, but could support an exemption if allowances are retired or provided for other beneficial uses. U.S. EPA has indicated, however, that it would not approve an exemption of this sort.

Comment: IDEM should clarify that units for which the source has accepted a federally enforceable permit limitation restricting heat input capacity are not subject to the rule. (PU)

Response: IDEM believes that permit limitations restricting capacity should be acknowledged and will provide clarification where needed.

Comment: Significant investments have been made to defer blast furnace gas (BFG) away from wasteful flaring operations. There appears to be some inconsistency by states with respect to the classification of BFG as a fossil fuel. IDEM should review this classification and develop a position consistent with U.S. EPA, other states, and its own permitting determinations. (LTV) (USS)

Response: IDEM has discussed this issue with U.S. EPA, which indicates that it has consistently included units fueled by blast furnace gas as controlled units in the SIP call. IDEM will continue to explore ways to address units that are inherently low emitting in the rule, but for now has included them in the large nonEGU trading budget.

Comment: IDEM has incorrectly classified the Perry K units as large nonEGUs even though U.S. EPA classified these units as small EGUs under the SIP call. A source that U.S. EPA decided was not be included under the federal rule, and specifically one where controls would not be cost-effective, should not be singled out for regulation under this rule. (CTE)

Response: How the Perry K units should be classified has been a subject of ongoing discussion

throughout U.S. EPA's development of the NO_x SIP call. The former owner of Perry K, Indianapolis Power and Light, argued at various times, that the Perry K units were large nonEGUs and small EGUs. While IDEM initially felt that the Perry K units met U.S. EPA's classification as a small EGU, once U.S. EPA finalized the rule, the categories of affected sources in the inventory were clearly defined in the inventory, and U.S. EPA's inventory classification for the Perry K units does not match rule language concerning applicability. It is IDEM's interpretation that the Perry K units would be subject to the original model trading rule, 40 CFR 96. In that rule, a unit that had a heat input capacity greater the two hundred fifty million Btu/hour would be subject irrespective of whether it generated electricity (63 FR57461). When IDEM began this rulemaking, it considered the classification of Perry K and the definition of large affected unit. IDEM believes the Perry K units are large affected units because the Perry K units have a maximum design heat input greater than two hundred fifty million Btus per hour (250,000,000), were in operation prior to 1997, and did not serve a generator during 1995 or 1996 producing electricity for sale to the electric grid.

Comment: Sources should be allowed to retire a unit and receive allocations to shift loads to cleaner units. This could be the most cost-effective means of achieving compliance. IDEM should verify that the draft rules allow this and that retired units will receive a one-time allocation. These allocations should have a five (5) year lifetime to establish the load shifting baseline. (III)

Response: The draft rules include a retired unit exemption that would provide an allocation of allowances until the next allocation period. Since the unit would not have any heat input data after it is retired, the unit would get zero (0) allowances when IDEM reallocates for the next allocation period. The lifetime of the allowances is not limited.

Comment: We believe that there is a typographical error in the draft language at 326 IAC 10-4-1(a). As currently worded, the proposed rule language could inadvertently capture sources with more than one (1) unit, even if the unit is not a NO_x budget unit. We believe it is not IDEM's or EPA's intent to regulate non-NO_x budget units. Therefore, we recommend that IDEM modify the proposed rule language to more accurately reflect the type of sources intended to be regulated by the NO_x rule. (NS)

Response: IDEM agrees and will make the necessary changes.

Allowance Allocation Methodology

Comment: The allowance allocation methodology using the average of the highest heat input values for two (2) of the five (5) years preceding the allocation is supported as well as the use of information from 1995 to 2000 for the initial allocation. (AEP) (IEUAWG) (CIN) (IMPA) (PU) (PEI) (ALCOA) (SLE) (VC)

Comment: IDEM should stay with U.S. EPA's model trading rule and use the highest two (2) years of heat input between 1995 and 1997 in the allowance allocation methodology. Longer look back periods may be considered in future allocations. This approach provides equity for smaller electric utilities that have the least operational flexibility. (HE)

Comment: IDEM should revise the language to specify that allocations are determined using a five (5) year average rather than the average of the highest two (2) years of the five (5) years to provide more stability in the allowance allocations. (IPL)

Comment: New units that operated or were issued construction permit by September 30, 2000 should receive allowances for the first allocation period as "existing" budget units. (CIN)

Response: IDEM believes the proposed allocation methodology time periods provide the necessary flexibility to account for abnormal operations. IDEM understands that any particular choice it makes will either be favorable or unfavorable for a particular company. However, positions may well be reversed in the next allocation period. IDEM has reconsidered the time periods to be used for heat input data in light of the availability or nonavailability of heat input data. In order to make sure that information for a particular year will actually be available to IDEM for use in the allocations, IDEM has revised the initial heat input years to 1995 to 1999.

Comment: We are opposed to using output as the basis for allowance allocations. The creation of an output based allocation system has economic and energy policy consequences that IDEM has not evaluated and these consequences have an impact on regulatory decisions subject to the jurisdiction of other state and federal administrative agencies. IDEM should commit to working with the potentially affected sources to more fully evaluate the impacts of a transition to output-based system. If such a system is adopted in the future, non-fossil fuel fired units should not be considered for inclusion in the program. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (CTE) (ALCOA) (SLE) (VCDH) (VC)

Comment: IDEM should use an output-based allocation system once U.S. EPA has established a uniform approach for measuring output. Output-based allocations treat all EGUs equally, encourage efficiency and allow for more electricity to be generated without increasing emissions. The output-based methodology should be included beginning with the second allocation period. (MWIPS) (EPI) (NS)

Response: IDEM is not including an output-based allocation system or a rule commitment at this time because all of the implications of using such an approach have not been developed, but will continue to investigate this option. U.S. EPA is working on guidance that will assist IDEM in the development of an output-based approach. U.S. EPA has also committed to basing the second allocations under the Section 126 rule on output, but has not published any proposed language at this time.

Comment: IDEM should extend the allocation period to a minimum of five (5) years. A three (3) year allocation period introduces additional uncertainty into compliance planning decisions and increases the risk of basing future operating constraints on an unrealistically short baseline period. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (IMPA) (VC)

Comment: Allocations should be adjusted annually, rather than every three (3) years, to ensure that allocations are based on the most recent data from units and acknowledge rapid change in the industry. (MWIPS) (EPI)

Comment: The allocation period of three (3) years is supported as long as the rule is revised to allow new sources to opt into the existing source pool earlier than otherwise allowed by the current rule language. (NS)

Comment: Due to the complexity of this rule, allocations should be given on a one-time basis eliminating the need for reallocations every three years. A small set-aside could be held in the event a new source could not obtain NO_x allocations at a reasonable price. The minimum reallocation should be once every five (5) years, if not done on a one-time basis. (III)

Response: IDEM believes that a three (3) year allocation period is a good compromise between these many different proposals.

Comment: IDEM should allocate allowances to nonEGU units based on seventeen hundredths pound per million Btus (0.17 lb/mmBtu) and should not require additional reductions, especially for cleaner units. (BSC)

Comment: All nonEGU allowances should be fully allocated to nonEGU units and should not be transferred for other uses. The allocation methodology in the draft rule is supported. (USS) (ALCOA)

Response: As currently written, the rule uses seventeen hundredths pound per million Btu (0.17 lb/mmBtu), a baseline emission rate or the allowable permit limit, whichever is more stringent, for allocations. IDEM is proposing to have just one (1) set-aside that would be used for new sources, both EGU and nonEGU, and one (1) for energy efficiency and renewable projects, but there are sufficient allowances in the budget such that sources will not make reductions beyond what U.S. EPA contemplated in the SIP call.

Comment: IDEM should clarify whether the rule is intended to allocate allowances to EGUs based on fifteen hundredths pound per million Btu (0.15 lb/mmBtu) or the more stringent of this rate and the allowable emission rate. There seems to be a conflict between 326 IAC 10-4-9(d)(1) and 326 IAC 10-4-9(d)(5)(C)(i). (IKEC)

Comment: If an existing or new unit emits NO_x at a rate of less than the 0.15 lb/mmBtu for EGUs or 0.17 lb/mmBtu for nonEGUs, the allocation should be based on the actual or permitted emission rate whichever is less. (VCDH)

Response: IDEM has revised the rule language to clarify that the more stringent rate should be used. An EGU will have allocations based on 0.15 lb/mmBtu or the allowable emission rate, whichever is less. If a source has been limited to a stricter emission rate in its permit, it cannot emit greater than that amount. Allocations based on a higher rate would only provide an economic benefit and would be inconsistent with the permitting process.

Comment: IDEM should review IMPA's heat input rate and re-calculate the allowances because the allowances calculated are approximately fifty percent (50%) of the amount to which IMPA is entitled. (IMPA)

Response: IDEM has received the updated information and has recalculated allowances accordingly.

Comment: IDEM should further develop the allocation procedures to allow units that have operated between 1995 and 2000 to receive an allocation for the existing source pool as opposed to the new source set-aside. (PEI)

Comment: If a unit has a history of at least one (1) or two (2) years of normal operations, the owner or operator should be given an option to receive an allocation from the existing unit allowance pool. New units should be rolled into the existing program as soon as possible. No unit should be required to receive an allocation from the new source set-aside for more than one allocation period. (PEI) (MWIPS) (EPI) (NS) (VC)

Response: IDEM is reviewing the procedures for transitioning a unit from "new" to "existing". IDEM agrees that a unit that has at least one (1) season of operation should be included in the existing source pool as soon as possible. However, the timing of the reallocation schedule may result in a unit drawing from the new source set-aside for several years.

Comment: It is unclear whether the reallocations under 326 IAC 10-4-9(f) are given to all budget units or only the units that commence operation after May 1. (III)

Response: The original reallocation in subsection (f) would go to the existing units and not back to the new units. IDEM has revised this section to indicate that unused allowances would be returned to the new source set-aside for the next year's allocation.

Compliance Supplement Pool

Comment: In the NO_x SIP call, U.S. EPA proposed to allow states to award additional allowances where needed to avoid transmission system reliability problems. We are skeptical that system reliability problems will result and wish to be notified of any public hearings on this subject. If IDEM includes such provisions, sources should be required to submit the utility's original schedules for

control device installation, copies of dated requests for bids for control device installation, documentation between utility and control device contractors and labor providers pertaining to schedules of control device installation, and documentation of efforts by the utility to purchase allowances. (HEC) (CACI) (NRDC) (SDC) (SV) (VWI)

Response: IDEM has included language from the SIP call that would allow a source to petition IDEM for allowances based on a demonstration of need. The draft rule language requires that IDEM ensure the opportunity for a public hearing on the distribution of compliance supplement pool allowances for a demonstration of need.

Comment: There is a concern with the partitioning of the compliance supplement pool between electricity generating units (EGUs) and non-EGUs. The setting aside of a disproportionately large specific pool of allowances for non-EGUs could lead to unintended consequences relating to electricity reliability. If IDEM is going to partition the compliance supplement pool, then the share of the pool for non-EGUs should be no greater than this source category's share of the overall budget, which is approximately two percent (2%). (AEP) (HE) (IEUAWG) (IPL) (VC)

Comment: The reservation of ten percent (10%) of the pool for nonEGU units is supported. This proposal provides an incentive for nonEGU units to achieve early reductions in advance of the May 31, 2004 compliance date. The language should also allow for a "needs demonstration" in lieu of early reductions. (CTE) (ALCOA)

Response: IDEM understands that there are some nonEGUs that will not be installing controls and will not need the allowances. IDEM has revised the language to combine the pool for use by EGUs and nonEGUs. In order to address the issue of oversubscription by a few sources, IDEM has included a process whereby sources that have made early reductions would have their requests combined with all others and the pool would be distributed pro rata. IDEM has divided the pool in two. Up to fifty percent (50%) would be distributed in early 2003 for early reductions in 2002 and the remaining would be distributed in early 2004 for 2003 reductions. This process should help a source that requests allowances based on "need", because at least fifty percent (50%) of the pool will be available in 2004 if the source cannot generate early reduction credits in 2003.

Comment: IDEM should preliminarily allocate emission reduction credits (ERCs) as soon as possible. The ERCs should be allocated based on the unit contribution to the total heat input in Indiana. Using heat input to allocate ERCs is appropriate because it will correspond to IDEM's overall methodology for allowance allocations and will give companies the opportunity to earn ERCs roughly commensurate with the proportionate level of emissions reductions they are required to make. If a company did not generate sufficient ERCs to utilize its preliminary allocation, the remaining unearned ERCs would revert to the general state compliance supplement pool, to be reallocated on a pro rata basis to other companies that have generated more ERCs than their preliminary allocation. (AEP)

(IEUAWG) (VC)

Response: IDEM will review this new proposal, although revisions to the draft rule are somewhat consistent with the suggestions except for timing. IDEM is proposing to collect all early reduction credit requests and distribute the allowances on a pro rata basis early in 2003 and 2004. Up to fifty percent (50%) of the pool would be available for 2002 reductions and the remainder for 2003 reductions or based on "need".

Comment: IDEM should not set-aside any allowances for the demonstration of need as we believe that those allowances will never be claimed because it will be impossible to make the showing required to obtain the allowances. (AEP) (IEUAWG) (HE) (IPL) (VC)

Response: IDEM will review these provisions, but is hesitant to not have some allowances available. While the claim may be true for EGUs, this provision is also available to nonEGUs. IDEM will continue to discuss this issue and possible solutions with interested parties.

Comment: IDEM should revise 326 IAC 10-4-15 to require notice of award of early reduction credits for a given year to be made not more than ninety (90) days after the annual filing deadline for the application for such allowances. The only exception to this requirement would be in the event that the early reduction pool was oversubscribed with any unclaimed allowances redistributed to sources that earned the rights to more allowances than they were preliminarily allocated. The allocation should be made prior to 2004, as currently written, to address the significant negative impact on compliance planning and implementation under the rule. IDEM should revise the language to require distribution of the allowances within one hundred fifty (150) days after each ozone control period in 2001 through 2003. (AEP) (CIN)

Response: The procedures for awarding the allowances is an important issue and IDEM will continue to discuss this issue with affected parties. IDEM has revised the rule to require early reduction credit requests to be filed by December 31 of the year in which the reductions took place and IDEM would distribute the credits by March 31 of the following year. Due to the fact that most, if not all, sources will not have controls in place until 2002, IDEM has limited the early reduction requests to the ozone control periods in 2002 and 2003.

Comment: 326 IAC 10-4-15(b) should be revised to allow the use of common stack monitoring to obtain allowances from the compliance supplement pool in accordance with 40 CFR 75. Requiring duct monitoring is excessive and unnecessarily burdensome to sources to obtain compliance supplement pool allowances. Any monitoring system approved under 40 CFR 75 should be acceptable for this purpose. (AEP)

Response: IDEM agrees that an approved monitoring system under the Acid Rain program should be allowed under this rule. It appears that 40 CFR 75.72 would allow for common stack

monitoring and this part of the 40 CFR 75, Subpart H monitoring required under 326 IAC 10-4-15.

Comment: The compliance supplement pool allowances should not be subject to flow control provisions due to their limited life. The allowances should expire at the end of the 2005 ozone season. IDEM should address this by striking 326 IAC 10-4-15(b)(1)(J). (AEP) (VC)

Response: IDEM understands the concerns with the CSP allowances and will discuss this issue with U.S. EPA. To date, U.S. EPA has indicated that flow control will not apply in 2004, but will apply in 2005.

Comment: The use of the most stringent permitted limit as the starting point for the calculation of early reduction credits is supported, but IDEM should clarify what constitutes the most stringent limit for units involved in an Acid Rain program averaging plan. We recommend that this limit be based on the actual limit, not the limit used in demonstrating the acceptability of the averaging plan. IDEM's proposed approach for use of the compliance supplement pool in the first two (2) years and the ability to generate early reduction credits between 2001 and 2003 is also supported. (AEP) (IEUAWG) (VC)

Comment: While IDEM's proposed approach of allocating allowances from the CSP is supported, the following criteria and procedures should be included in the draft rule.

- Installation of new NO_x controls must be required as part of an application for early reduction credits.
- The difference between the previous actual NO_x emission rate and the new (controlled) emission rate should be used to calculate the quantity of early reduction credits. This is preferred over the "most stringent current limit" to ensure real reductions are achieved.
- Credits should be allocated on a pro rata basis as soon as practical after the end of the 2003 ozone control period. All credit applications should be treated equally and if the pool is oversubscribed, all credits should be discounted an equal amount so the pool is not exceeded.
- Applications for early reduction credits, based on projected reductions, may be submitted in advance of the actual reductions, by a date certain and all complete applications submitted by the date would be considered equally. Following the 2003 ozone control period, all operational data would be "trued up" and allocations adjusted accordingly. (HE)

Response: IDEM agrees that the allocation of allowances should be for true reductions and will revise the rule language accordingly.

Comment: IDEM should address electricity reliability concerns by doubling the size of the compliance supplement pool, but limiting its use to early reduction credits. This would provide an additional incentive for early reductions with accompanying air quality benefits and promote the development of a viable trading program. (IEUAWG) (IMA) (CIN) (ICC) (VC)

Comment: IDEM should look for creative ways to increase the size of the compliance supplement pool within boundaries established by U.S. EPA. Preliminary information provided by IDEM indicates non-EGU sources may not need their full allocation under the proposed allocation methodology. (HE) (IMPA)

Response: Information from U.S. EPA has indicated that an increase of the CSP would not be approved and IDEM is working with U.S. EPA on the inventory and associated budgets to identify any flexibility.

Comment: IDEM should delete the language under 326 IAC 10-4-15(b)(1)(D) concerning compliance with any state or federal emissions requirements. This enforcement provision is too vague and is not related to NO_x reductions and should be deleted. (IKEC)

Response: IDEM believes that ongoing compliance is a valid criteria for determining whether it is appropriate to approve a request for allowances, but agrees that the language should be narrower. IDEM has revised the language to specify that the unit must be in compliance with any NO_x emission requirements.

Comment: The draft rule requires that 40 CFR 75, Subpart H monitoring start in 2000 to generate early reduction credits from the compliance supplement pool. This is unfair for large affected units that are not part of the Acid Rain program. IDEM should develop alternatives to units that currently do not comply with Subpart H monitoring. (III)

Response: U.S. EPA is clear that the monitoring needed to verify early reduction credits should be consistent with the SIP call. IDEM does agree that the rule language should be revised to account for sources that will not begin to generate credits until 2002 or 2003. The 2000 date was meant to address units that would generate credits in 2001 and the need to have one (1) year of monitoring data available.

Energy Efficiency and Renewable Set Aside

Comment: IDEM should include a twenty percent (20%) set-aside in the trading program for energy efficiency and renewable energy projects. This would provide an incentive to bring clean energy projects to Indiana and reduce air pollution, including toxic pollutants. Energy efficiency and renewable energy investments can also increase compliance flexibility and improve local economies through higher productivity and the creation of jobs. The set-aside should not be distributed to nuclear power plants or garbage incinerators. (BH) (CR) (JU) (ML) (RV) (ARL) (MS) (MKP) (PJR) (LS) (LH) (NL) (EMW) (JDH) (JL) (GK) (GG) (SJG) (BDB) (BJL) (JR) (AH) (DLB) (SM) (KG) (CF) (JK) (AP) (MLS) (KT) (JE) (CS) (LJ) (MG) (LAH) (KP) (JK) (DM) (KPH) (HC) (BM) (JST) (DR) (SB) (TS) (DL) (BR) (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI)

Comment: The inclusion of a set-aside for energy efficiency or renewable energy set-aside is not supported for the following reasons.

- Setting aside additional allowances increases the stringency of an already aggressive program.
- Energy efficiency and renewable energy sources have no emission reductions of their own.
- Reducing the number of allowances directly allocated to existing sources merely reduces the flexibility source owners have to design the most cost-effective response to their obligations.

Should IDEM pursue a energy efficiency and renewable energy set-aside, the allowances should be created specifically for the set-aside from the new source set-aside. However, IDEM has not advanced any proven methodology that fairly allocates allowances for energy efficiency or renewable energy projects. Because of this, such a rule is premature at this time. In addition, the Energy Policy Division of the Indiana Department of Commerce is currently planning to initiate a program to encourage energy efficiency and distributed generation through the use of grants and low-interest loans. This program is the type that should be used to provide encouragement and incentives for energy efficiency and renewable energy projects and IDEM should defer these issues to the other state agencies charged with this task. (AEP) (HE) (IKEC) (CIN) (IMPA) (USS) (CTE) (ALCOA) (IPL) (VC)

Comment: IDEM should not include an energy efficiency and renewable energy set-aside for the following reasons:

- The proposal will have no air quality benefits since the total number of allowances remains the same.
- The set-aside will increase uncertainty and raise electricity generator compliance costs.
- The approach advocated by U.S. EPA would seek to continue mandatory utility-funded demand side management programs and impose an unfair, indirect tax on customers.
- The treatment of “free riders” ensures windfalls to projects that will be implemented anyway because of cost-effectiveness, but it is not a cost-effective means to provide incentives to new projects designed to further U.S. EPA’s air quality goals.
- Many customers may see bill increase because of the set-aside.
- Requiring existing and future generators to subsidize current and future competitors is unfair.
- The proposal is too vague about the allocation of the allowances to be adopted.
- U.S. EPA has overstated the level of participation that can be reasonably assumed.
- Record keeping obligations will deter participation
- U.S. EPA’s guidance projects outrageously ambitious growth of non-hydro renewable supply resources. (IEUAWG) (SLE)

Comment: An energy efficiency and renewable energy set-aside is supported, but the allowances for this set-aside should not be taken from the EGU budget. Many of the projects are not directly related to generation of electricity for sale. One way to address this is to provide allowances from the budget for area and mobile sources. (VCDH)

Response: An energy efficiency and renewable energy set-aside is a key policy issue on which discussion will continue. IDEM agrees that such a set-aside would be beneficial. Other states have adopted or have proposed to adopt this type of set-aside using different amounts. New York set-aside three percent (3%) of the trading program budget and Massachusetts set-aside five (5%) of the budget. IDEM is proposing to set-aside two percent (2%) of the trading budget, one thousand one hundred forty-one (1,141) tons, for energy efficiency and renewable energy projects. However, the allowances would be derived from the nonEGU budget. A change in status of some nonEGU units since U.S. EPA set the Indiana budget has provided IDEM with additional flexibility to establish this set-aside without creating any additional burden on NO_x emitting sources. IDEM will continue to evaluate the impact of this set-aside on existing nonEGUs. Based on the types of projects likely to apply for this set-aside, and the relatively small amount of NO_x avoided by each one, a two percent (2%) set-aside will be ample. Information from the Energy Office, Department of Commerce indicates that this would be more than sufficient for energy efficiency and renewable energy projects expected in Indiana. IDEM does not agree that it makes sense to set-aside twenty percent (20%) of the trading budget for these projects, as many comments have suggested, because it is significantly more than would be used and would require substantially larger controls at EGUs and nonEGUs, with increased costs to those units and to electricity consumers. IDEM also has proposed that, for each year, any unclaimed allowances in the set-aside would be added to the new source set-aside for that year. IDEM has also included a provision that the allowances for energy efficiency or renewable energy projects may be requested annually for a maximum of five (5) years to try and assure that new sources will receive at least some allowances needed for operation.

New Source Set Aside

Comment: IDEM should include a new source set-aside to be used for new, cleaner power plant construction to create construction jobs and replace older, more polluting power plants. The set-aside should be set at five percent (5%) during 2003-2005 and two percent (2%) thereafter. (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI) (CIN) (PU) (SLE)

Comment: The new source set-aside should be no more than three percent (3%) to avoid exacerbating the strain on electricity reliability in Indiana. In addition, the following should be included:

- the set-aside should be distributed on a first-come, first-served basis,
- new sources should be required to return any unused allowances,
- returned allowances should be allocated to other new sources that did not receive sufficient allowances prior to returning the allowances to any existing sources, and
- if the allocation period is longer than two (2) years, then after two (2) years of operation new sources should receive a fixed allocation for the remainder of the allocation period. (IEUAWG)

(HE) (VC)

Comment: The new source set-aside should be established at three percent (3%) for 2004 through 2006 and two percent (2%) thereafter. (IPL)

Comment: IDEM should increase the size of the set-aside to ten percent (10%) for the first three (3) years of the program and four percent (4%) thereafter. An adequate new source set-aside will encourage newer cleaner plants that will ultimately replace older existing sources. (PCEGC)

Comment: IDEM should confirm that the new source set-aside system operates in two (2) pools, one for EGUs and one for nonEGUs, and not one (1) pool. IDEM should also confirm that under subscription of the pool would result in allowances being distributed to the existing EGU pool and not to the entire NO_x budget pool. (IKEC)

Comment: No new source set-aside should be established for nonEGUs. The nonEGU budget should be fully allocated to the existing sources affected by the rule and made available to new sources via the trading market. (USS)

Comment: The new source set-aside for nonEGUs should only be one percent (1%). IDEM has already provided information indicating that this would be an ample amount for current new sources and would allow the owners and operators of existing units to retain more of their allocations. (CTE) (ALCOA)

Comment: Set-asides of five percent (5%) and two percent (2%) are too much for nonEGUs and do not reflect past trends for growth for nonEGUs. (III)

Comment: Any set-aside for EGUs must come from the EGU budget and there should be no transfer from the nonEGU budget. (ALCOA)

Comment: A sufficient new source set-aside should be established to allow fair access to the marketplace. The set-aside percentages currently in the draft rule should be applied against the entire budget, to be allocated to new EGUs and new nonEGUs alike. (MWIPS) (EPI)

Comment: All allocations should use 0.15 lb/mmBtu or 0.17 lb/mmBtu regardless of permit limits. Such a system promotes fairness, is easy to administer, discourages permittees from seeking relaxed permit limits, and provides incentives to reduce NO_x emissions beyond regulatory requirements. (MWIPS) (EPI)

Comment: IDEM should clarify how set-aside allowances will be allocated.

- Will the set-asides be granted on a first-come, first-served basis or an equal basis for all applications submitted?
- What is the earliest that allocations can be applied for?
- What happens if a unit granted allocations is not constructed or does not use all of the allocations (reallocation is available, but comes after the fact eliminating planning)? (III)

Comment: New source set-aside allowances should be distributed on a first-come, first-served basis, based on the date the unit is issued an approved construction permit. Any unused allowances should be allocated to new units that did not receive allowances initially before reallocating the

allowances back to existing units. (SLE)

Response: IDEM is proposing to have just one (1) new unit set-aside that will originally be established using five percent (5%) of the EGU budget for the 2004 through 2006 time frame and one percent (1%) of the nonEGU budget. For following years the nonEGU percentage would stay the same, but the set-aside would be reduced to reflect using two percent (2%) of the EGU budget. New sources will have to reapply annually, by December 1 of the year prior to the ozone season in which it intends to operate until the source is able to use allowances from the existing source pool and IDEM will consider all applications received by the deadline equally. Allowances will be allocated using 0.15 lb/mmBtu (EGUs) or 0.17 lb/mmBtu (nonEGUs) or the permitted limit, whichever is more stringent. For new EGUs, a construction permit must be issued and any appropriate notifications have been received by the Indiana Utility Regulatory Commission before a request can be made. If the set-aside is oversubscribed, then allowances will be distributed pro rata. If there are unused allowances and the energy efficiency and renewable energy set-aside was oversubscribed, additional allowances will be distributed to those projects pro rata and any allowances left will be returned to the following year's set-aside. Any allowances not used by new sources after the ozone season are returned to the set-aside for the next year's allocations. Allowances will not be available for trading or selling until the unit is part of the existing source allocation pool and is able to bank unused allowances.

Opt-in Program

Comment: The inclusion of opt-in provisions in the draft rule is supported. An opt-in program will increase the coverage of the trading program and help stimulate the emergence of a viable market. (IEUAWG) (HE) (CIN) (SLE) (VCDH) (VC)

Response: IDEM appreciates the support.

Alternative Compliance Options

Comment: If IDEM does not shift the compliance date to 2005, then it should include innovative compliance provisions similar to those being developed by Ohio. The innovative plan in Ohio would shift the compliance date forward to May 1, 2004 and add twenty percent (20%) of the baseline emission allocation for each source to their 2004 allocation. These provisions provide an affected source with a choice of either operating controls during May 2004 and bank the excess allowances or not operate controls and have the additional allowances deducted for compliance. If the source decides to control emissions, then the allowances could be banked for future unrestricted use or sale. This is a proactive way to encourage the operation of emission controls earlier than needed and further aid in reducing risk of inadvertent non-compliance should a source not be able to obtain the

necessary controls in a timely fashion. (AEP) (IEUAWG) (IKEC) (IMA) (CIN) (IMPA) (ICC) (VC)

Response: U.S. EPA has indicated that it would not approve such provisions, which would have the effect of increasing the NO_x budget in future years. IDEM will continue to consider this option and accept comments concerning the inclusion or exclusion of this option.

Comment: IDEM should consider an alternative compliance option promoting technological innovation and multi-pollutant controls. IDEM should include provisions in the draft rules that provide for an alternative compliance plans that permits sources, on a unit specific basis, to apply for a compliance date extension up to May 1, 2008. Any unit that has received such approval would have to meet established emission reduction targets no later than May 1, 2008. IDEM should add an additional section to address the alternative compliance option. As a further incentive, IDEM should enlarge the compliance supplement pool by twenty percent (20%) or create a innovative technology pool of identical size. These credits would be available for the ozone control periods in 2004 through 2007 for any unit operating under an approved alternative compliance plan. The addition of the additional allowances will not materially affect U.S. EPA's ability to evaluate the impact of the emission reductions in 2007, especially when U.S. EPA knows that those tons will be removed by 2008. (AEP) (IEUAWG) (IKEC) (IMA) (ICC) (NS) (VC)

Comment: While the alternative compliance plan is supported, IDEM should make sure it accommodate the ability of a company to include installation of new, efficient, cleaner generation. NO_x reductions should not be limited to the installation of add on control devices. This could be accomplished by allowing affected sources the option to commit to the installation of new, clean, efficient generation in exchange for sufficient time to plan, permit and install the equipment, even if it requires additional time beyond May 31, 2004. (NS)

Comment: There are several hurdles that would have to be overcome if IDEM pursues a multi-pollutant compliance option in the rule. Following are comments concerning this compliance option:

- The absence of regulatory incentives will not deter the development of innovative technology, multi-pollutant control, or otherwise. Other venues, aside from regulatory incentives are available.
- There are other regulatory drivers that will promote control of other air pollutants besides NO_x, such as the potential U.S. EPA regulatory determination regarding utility mercury controls, PM_{10} air quality standards, regional haze regulations and new source review enforcement initiatives.
- This alternative is not feasible for units that already have flue gas desulfurization technology deployed. Not all utilities can benefit from such an alternative.
- Multi-pollutant control technology may make sense in the future, but including the option in this rule would not provide any additional inducement.

C If IDEM would consider incorporating the option into the rule, there should be no provision for additional allowances. This would be a red flag for U.S. EPA and the compliance extension is enough incentive. (HE)

Comment: Alternative compliance plans for multi-pollutant reductions are supported, but the compliance date should not be extended past May 1, 2007 and no additional allowances provided.. IDEM should find ways to accommodate these plans and account for them through the compliance supplement pool. (VCDH)

Response: IDEM is not including an alternative multi-pollutant compliance plan at this time. West Virginia included such a provision and U.S. EPA has not shown any sign that it will approve the rule. In a letter, dated November 28, 2000, U.S. EPA-Region 3 indicated specific concerns with the alternative compliance plan and the ability of West Virginia to meet its 2007 budget. As with other alternative compliance options, IDEM will continue to consider and accept comments concerning multi-pollutant compliance plans.

Miscellaneous

Comment: 326 IAC 10-4-5(c), Computation of Time, should be revised to avoid the unintended effect of lengthening the control period should September 30 fall on a weekend. (AEP) (IEUAWG) (HE) (NS) (VC)

Response: IDEM agrees and will make suggested changes.

Comment: 326 IAC 10-4-1(b)(3)(D), 326 IAC 10-4-4(e) and 326 IAC 10-4-3(e)(7) should be revised to allow for the centralized maintenance of records required by the rule. IDEM has acknowledged the need for centralized record maintenance in the past. (AEP) (IEUAWG) (HE) (IPL) (NS) (VC)

Response: IDEM has discussed this issue with U.S. EPA. IDEM understands the concern about keeping records at facilities that are generally unattended. U.S. EPA's concern is that companies with facilities in several states may store all records in a central location, possibly hundreds of miles from the facility. IDEM will continue to discuss this issue to see if both concerns can be addressed, and welcomes specific suggestions.

Comment: 326 IAC 10-4-1(b)(3)(E) should be revised to change the November 1 date to synchronize this reporting with other reporting deadlines for the third calendar quarter. (AEP)

Response: A specific date was not suggested and it is unclear whether the requested change should be before or after November 1. If reporting deadlines are before November 1, then it would seem that a change is not needed because the rule only requires reporting "by November 1".

Comment: 326 IAC 10-4-10(a)(1), 326 IAC 10-4-10(g) and 326 IAC 10-4-10(h) appear to include incorrect cross-references to section 13(j). These references should be section 13(i). (PU) (IPL)

Response: IDEM will make the changes.

Comment: The NO_x reduction rule, #98-235 APCB, should be formally removed from consideration. (III)

Response: IDEM will formally withdraw #98-235 after this rulemaking has been completed and an effective rule is in place. The SIP call is still in litigation and the Supreme Court has not issued a decision as to whether it will hear the case.

Comment: Please describe how a source will move allocations between a compliance account and an overdraft account. (III)

Response: As indicated in 326 IAC 10-4-11, an authorized account representative would submit the transfer to U.S. EPA and identify the accounts and allowances involved in the transfer. Within five (5) days of receipt of the transfer, U.S. EPA will record the transfer and within five (5) days of recordation, U.S. EPA will notify the account representatives.

Comment: On January 26, 1996, U.S. EPA issued a final rule granting a NO_x waiver for northwest Indiana. IDEM should recognize the NO_x waiver by removing NO_x from the applicability provisions of 326 IAC 2-3-2 as part of the comprehensive rule changes for the NO_x SIP call. (IPC)

Comment: The Indiana Offset rules should be modified to eliminate NO_x offset ratios of greater than one to one (1:1). The NO_x reductions demonstrate attainment and further reductions are not needed and penalize growth. (III)

Comment: IDEM recently revised the permitting rules under 326 IAC 2-2 to exclude pollution control projects from rule applicability. This change makes the rule consistent with federal regulations and U.S. EPA guidance. As part of the comprehensive rule changes for the NO_x SIP call, IDEM should also revise the language under 326 IAC 2-3-1 to include the pollution control project exemption. (IPC)

Response: IDEM believes that these suggestions are outside the scope of this rulemaking.

Comment: The references to (C)(1) and (C)(2) under 326 IAC 10-4-9(d)(5)(D)(i) should be (C)(i) and (C)(ii) respectively. (IPL)

Response: IDEM has revised this section and the references are no longer present.

Comment: The proposed trading system is unreliable in its current form and needs a “safe harbor” to prevent unfair and arbitrary consequences. Although the trading program is meant to

provide for cost-effective reductions, the trading program is not in place at this time. This means that a source must either implement reductions up-front at its own facilities regardless of cost or gamble that allowances will be available for purchase later. This could be prevented with a safe harbor provision that would insulate a source if no allowances are available or if the price exceeds some threshold amount. Suggested language has been submitted previously. (IPL)

Response: IDEM has included the regional trading program in the rule to meet the budget requirements of the NO_x SIP call. The safe harbor provisions that have been suggested state that a source would enter into an enforceable commitment to purchase allowances if reductions could not be made. However, the commentor goes on to state that "if no allowances are available, or if the price of the allowances exceed some threshold amount," the source would be insulated from being in violation. IDEM does not see how U.S. EPA would approve these provisions, and IDEM has received no indication from U.S. EPA that they would consider the provisions, because it would allow for an exceedance of the budget. Although a NO_x SIP call trading program is not in place, the Ozone Transport Region (OTR) has a trading program in place and there may be a Section 126 program in place prior to 2004.

Penalty Provisions

Comment: Based on the likelihood that the only sources that will exceed the allocations will be the sources that cannot purchase allocations on the open market towards the end of the ozone season, the three (3) times penalty is excessive. In addition, this provision is a non-monetary penalty that IDEM has no authority to impose. Sources should be required to obtain allocations for excess emissions at a one to one (1:1) ratio and penalties should be dealt with in subsection (k)(7). (III)

Response: The penalty in 326 IAC 10-4-10(k)(5) is taken directly from the requirements of 40 CFR 96.54(d)(1). Under these sections, the penalty is imposed by U.S. EPA, not IDEM. Additionally, the penalty portions are located so as to correspond to the location of the equivalent sections of the federal rule.

Comment: It is unclear why violations are issued for a unit's exceedance of allocations and excess emissions are based on a unit's emissions, when the account representative controls allocations for a source. This rule should be written such that a source shall not exceed, in totality, the sum of allocations from all units. (III)

Response: U.S. EPA set up the trading program to allocate allowances to individual units and this is consistent with the way U.S. EPA set up the Acid Rain program. Each unit will be monitored and it is this data that will be used to determine compliance. In effect, it is the sum for the source, in that, a unit that may have excess emissions can be brought back into compliance by transferring allocations from other units or through the purchase of allowances.

Comment: The purposed rule under 326 IAC 10-4-4(c)(2) and 326 IAC 10-4-10(k)(7) indicate that each ton of excess emissions is a separate violation. This goes beyond what is required under Indiana statutes and IDEM lacks the authority to make this change. (IPL)

Comment: The penalty "guideline" in 326 IAC 10-4-10(k)(7) is arbitrary and unlawful in assuming that any excess emissions constitute a violation across each of one hundred fifty-three (153) separate days. The days of violation would be properly determined by identifying the days on which emissions occurred after the necessary emission allowances had been exhausted. (IPL)

Response: Because the NO_x rule is based on a trading program that strictly caps emissions, both regionally and on a source-specific basis, it is appropriate that every ton of emissions over a source's available allowances should be considered a separate violation. Otherwise, the penalty would not be sufficient to remove the economic benefit of noncompliance and would not deter excess emissions. Furthermore, it makes sense that a source that emits fifty (50) excessive tons should pay a higher penalty than a source that emits one (1) excessive ton. Making each ton a separate violation ensures that the penalty will include the economic benefit of noncompliance and will be proportionate to the severity of the violation.

Additionally, the rule provides that each day of the ozone season constitutes a violation because the rule caps emissions on an ozone season basis and does not assign the emissions of discrete tons to a particular day. If the source exceeds its allowances for the ozone season, then each day of that season is a separate violation. However, the rule does provide flexibility by allowing the owners and operators of the unit to demonstrate that a lesser number of days should be considered.

The state rule defines what is a violation in the same manner as the federal law at 40 CFR 96.6(c)(2) and 96.54(d)(3). Authority to incorporate these provisions into state rules can be found in IC 13-17-3-4, which provides that the air pollution control board (board) shall adopt rules that are necessary to implement the Clean Air Act (CAA), and in IC 13-17-3-11, which provides that the board has the authority to adopt rules under discretionary authority granted to the state under the CAA and its regulations. Finally, IC 13-30-4-1 provides explicitly that a person who violates any provision of a rule adopted by the board is liable for a penalty per day per violation.

Comment: Another arbitrary penalty appears at 326 IAC 10-4-12(i) concerning failure of monitoring equipment to receive formal certification. The rule language states that upon disapproval of a certification, all previous data will be discarded and maximum potential emissions will be assumed for the period. This is arbitrary when reliable information is available. (IPL)

Response: The penalty concerning certification is taken directly from the requirements of 40 CFR 96.71(b)(3)(v). U.S. EPA intended to have a strong incentive for monitoring in accordance with the rule.

Monitoring

Comment: The language under 326 IAC 10-4-12(b)(1) makes reference to 40 CFR 75.76. In reviewing 40 CFR 75 we are unable to locate 40 CFR 75.76. (AEP)

Response: U.S. EPA has indicated that the correct references should be 40 CFR 75.71 and 40 CFR 75.72.

Comment: It appears that 326 IAC 10-4-12(c) prohibits units connected to common stacks from using monitoring methods that have been used for a number of years to comply with Acid Rain program requirements. IDEM should revise this subsection to allow common stack monitoring in accordance with 40 CFR 75. (AEP) (RPL)

Response: Subsection (c) is primarily timing requirements and refers the reader back to subsection (b) for specific required actions. By revising the rule language based on the previous comment, it appears to address the concern because 40 CFR 75.72 discusses monitoring via a common stack. IDEM will discuss this with U.S. EPA to verify that monitoring methods under the Acid Rain program are allowed under the trading program.

Comment: 326 IAC 10-4-12(q)(2) should be reviewed to correct any inaccurate references, specifically the reference to section 10(n). (AEP)

Response: IDEM will review the language and correct any inaccurate references.

Comment: The draft rule requires monitoring in accordance with 40 CFR 75, Subpart H. These provisions generally require the use of continuous emissions monitoring systems (CEMS). In some cases, units are allowed to monitor using flow monitoring and emission factors determined through testing under Appendices D and E. However, these provisions generally address utility boilers and not industrial boilers. IDEM should either not specify 40 CFR 75 monitoring requirements for industrial boilers and remove the CEMS requirement or specify alternative methodologies. One alternative could be the continuous measurement of fuel usage and use of accurate emission factors, based on annual stack testing similar to the cement kiln provisions in 326 IAC 10-3. IDEM should also confirm that the alternative methodologies available under 40 CFR 75 will continue to be available under this rule. (BSC) (IMPA) (USS) (III) (LTV)

Response: As part of the trading program, U.S. EPA has required monitoring consistent with 40 CFR 75, Subpart H. IDEM has discussed the alternative methodologies under 40 CFR 75 and their availability to industrial boilers with U.S. EPA. U.S. EPA has stated that the alternatives would be available as long as existing criteria, including emissions thresholds are met. IDEM will continue to discuss the alternative methodology issue with U.S. EPA. It should be noted that the cement kilns are not included in the trading program and if a kiln opts-in, the kiln will have to monitor according to the trading program and not 326 IAC 10-3.

Comment: IDEM has included a certification deadline of May 1, 2001 for units that anticipate requesting early reduction credits. Because this rule will not be effective by that date, we do not believe this certification deadline is appropriate. This deadline is unachievable and unfair to sources that are not part of the Acid Rain program, but wish to participate in the early reduction credit program. A more appropriate date would be nine (9) months after the rule is effective to address the complex nature of the monitoring requirements under this rule. (CTE) (III)

Response: IDEM has revised the rule to reflect the need to have a certification prior to the ozone season for which a source is seeking early reduction credits.

Comment: 326 IAC 10-4-12(f)(3) should be revised to include "or breakdowns totaling less than five percent (5%) of the total operating time and repairs." (III)

Response: The monitoring provisions under this rule and 40 CFR 75 are very stringent concerning data availability and IDEM will have to discuss this issue with U.S. EPA.

Comment: Quarterly reports are unnecessary considering the rule is based on ozone season compliance. (III)

Response: Although IDEM agrees that compliance is based on the entire ozone season, IDEM has discussed this issue with U.S. EPA to see what the need or rationale is for quarterly reporting. According to U.S. EPA, the quarterly reporting is needed to assist in identifying problems that could invalidate monitoring data. By having quarterly reporting, U.S. EPA can identify problems early and reduce the amount of time that a source would have invalid data.

NO_x Allowance Banking

Comment: The inclusion of flow controls if banked allowances exceed ten percent (10%) creates a "use it or lose it" incentive. In addition, a source may have to store credits for several years to bring a new or existing unit online. This storage could potentially bring the banked allowances over ten percent (10%) and penalize the project. (III)

Comment: Set-asides should not be included in the ten percent (10%) flow control trigger. (III)

Comment: U.S. EPA should calculate the available banked allowances at a minimum one (1) year in advance and preferably three (3) years in advance to allow for planning. If this is not possible, the proposed language is preferable. (III)

Response: U.S. EPA has not allowed any flexibility with the flow control provisions and it is unlikely that an individual state could dictate how the flow control provisions should function. A new source would have the ability to draw from the new source set-aside and should not be affected by the flow control provisions.

Permit Requirements

Comment: IDEM should clarify that all pollution control projects and associated modifications that are necessary to comply with this rule are exempt from new source permitting and performance standard requirements and are to be considered no more than minor source modifications, if modifications at all, under the Title V program. (IEUAWG) (HE) (CIN) (SLE) (NS) (VC)

Response: IDEM anticipates that many, if not all, of the modifications will fall under pollution control project exemptions, but IDEM cannot anticipate the nature of every source-specific modification that will be required for each source to comply with the rule. The state rules do not add any permitting requirements that are not federally required. IDEM will follow US EPA policy regarding pollution control exemptions from federal rules as reflected in the WEPCO decision and other federal policies and rules. Title 326 of the Indiana Administrative Code currently contains language regarding permitting control devices. For a source with a Federally Enforceable State Operating Permit (FESOP), the potential to emit (PTE) exemption levels listed in 326 IAC 2-1.1-3(d)(1) define when installation of pollution control equipment may qualify as exempt, 326 IAC 2-8-10(a)(11) defines when installation of pollution control equipment qualifies as an administrative permit amendment, 326 IAC 2-8-11.1(d)(3) defines when installation of pollution control equipment qualifies as a minor permit revision, and 326 IAC 2-8-11.1(f)(1)(l) defines when installation of pollution control equipment qualifies as a significant permit revision. 326 IAC 2-8-10 and 2-8-11.1 should be reviewed to determine what level of permitting is required for associated modifications at a source.

For a source with a Title V Operating Permit, the potential to emit (PTE) exemption levels listed in 326 IAC 2-1.1-3(d)(1) define when installation of pollution control equipment may qualify as an exempt modification, 326 IAC 2-7-10.5(d)(3) defines when installation of pollution control equipment qualifies as a minor source modification, and 326 IAC 2-2-1(o)(2)(H) and 2-7-10.5(f)(8) define when installation of pollution control equipment qualifies as a significant source modification. 326 IAC 2-7-10.5, 2-7-11, and 2-7-12 should be reviewed to determine what level of source modification and permit modification is required for the associated modifications at a source.

Comment: IDEM should review the cross references under 326 IAC 10-4-7(c) and correct them accordingly. (AEP) (IEUAWG) (HE) (IPL) (VC)

Response: IDEM will correct any inaccurate cross references.

Comment: The requirement to submit a permit application at least eighteen (18) months prior to the commencement of operation of a new unit is too long to allow for flexibility. Boilers can often times be installed very quickly and IDEM should not require more than two hundred seventy (270) days. (III) (NS)

Response: In accordance with 326 IAC 2-1.1-8 and 326 IAC 2-7, IDEM has specific time

periods to a issue permit for a new source or a modification to an existing source after receiving a complete application. IDEM agrees that an 18-month time frame for application review is excessive for the types of permits with review periods that are less than 18 months. Therefore, IDEM has revised the draft rule to reference the applicable time periods for review of permit applications for new sources and modifications to existing sources in 326 IAC 2-1.1-8 and 2-7.

Comment: A process should be defined to insure that information concerning controls is incorporated in operating permits. Everyone needs to know what maintenance and modifications relate to pollution control and what might be related to improvements in generating capacity. The permit modification process should be at no cost to industry and as streamlined as possible. (VCDH)

Response: 326 IAC 2-7 and 326 IAC 2-8 and 326 IAC 10-4-7 contain specific requirements for what information sources must submit when requesting a source or permit modification to a Part 70 permit or a permit revision to a Federally Enforceable State Operating Permit (FESOP). 326 IAC 2-7-5, 2-7-6, 2-7-10.5, 2-7-11, and 2-7-12 and 326 IAC 2-8-4, 2-8-5, 2-8-10, and 2-8-11 as well as 326 IAC 10-4-7 contain specific requirements on what information should be included in source and permit modifications to Part 70 permits and permit revisions to FESOPs for sources that will be subject to the draft rule when it is final. In addition, IDEM includes a technical support document (TSD) with every permit decision to describe the basis for issuing the permit decision. The TSD will include a discussion of the modification or change that triggered the requirement for the modification or revision and the effect of that modification or change on the capacity and the potential to emit of the source. 326 IAC 2 includes specific source and permit modification procedural requirements for Part 70 sources, including issuance schedules and fee requirements, and specific permit revision requirements for FESOP sources, including issuance schedules and fee requirements. IDEM will follow the existing rules for the issuance of modifications and revisions for changes required by the draft rule.

NO_x Allowance Tracking System

Comment: IDEM should verify that per 326 IAC 10-4-10(j), allocations do not expire and once held in an account, they can be used in any future year.

Response: Once an allowance has been allocated, the allowance is available for use until transferred, deducted for compliance, or retired.

Comment: There is an error in 326 IAC 10-4-10(d)(2)(C). The phrase "... any alternate NO_x authorized account representative any:" should have the second "any" deleted after "representative." (NS)

Response: IDEM has made the correction.

Comment: 326 IAC 10-4-10(d)(3)(C) and (D) address the procedure for changes to account representatives and alternate representatives and the retention of responsibility for the prior representative until U.S. EPA receives the superseding application. The responsibility should change with the postmarking, or dated receipt from a private carrier for shipping of the change of notice submittal, as allowed in other IDEM regulations for submittals. (NS)

Response: IDEM has discussed this issue with U.S. EPA and they have indicated that the language is needed to address problems that could occur during transitional periods between account representatives. U.S. EPA must know with certainty that the person making the submittal is the person responsible for the account and will not make a change until a new certificate has been received.

Comment: The language under 326 IAC 10-4-10(n) needs to be revised to say "twenty (20) business days" consistently throughout this section. (NS)

Response: IDEM agrees and has included the suggested change.

Compliance Date

Comment: We are concerned about whether the draft rules require adequate controls to meet the Indiana NO_x budget and whether the controls are required to be implemented by the May 31, 2004 deadline. IDEM should adopt a 2007 NO_x budget consistent with the SIP call and a May 31, 2004 compliance deadline. (CACI) (HEC) (IWLA) (NRDC) (SDC) (STV) (SCHC) (VWI)

Response: IDEM has proposed rule language consistent with the model trading rule under the SIP call and a May 31, 2004 compliance deadline.

Comment: Shortages of skilled trade labor, materials of construction, and other issues beyond our reasonable control are likely to create electric system reliability concerns if the draft rule does not provide additional flexibility for the installation of controls. To help minimize risk, IDEM should establish a May 1, 2005 compliance date. (AEP) (IMA) (ICC)

Response: IDEM has included the compliance supplement pool provisions that U.S. EPA established for compliance extensions. U.S. EPA has clearly indicated that a rule with a compliance date later than May 31, 2004 will be disapproved.

Definitions

Comment: The definitions of EGU and large affected unit do not necessarily differentiate in terms of electrical generation. A unit greater than two hundred fifty (250) mmBtu/hour that serves a generator less than twenty-five (25) megawatts and produced electricity for sale under a firm contract to the electric grid would not be subject to this rule. (III)

Comment: The definition of large affected unit should be revised to subdivision (A) and (C) consistent. A unit that serves an electric generator less than twenty-five (25) megawatts with potential to use no more than fifty percent (50%) of the electrical capacity should be defined as a large affected unit regardless of operation commencement. (III)

Comment: 326 IAC 10-4-2(15)(C) should be revised to include "to the grid" after "produces electricity for sale." This would address cogeneration in which electricity is sold back to the source. (III)

Comment: We do not understand the rationale for the distinctions made between the provisions of 326 IAC 10-4-2(15)(A), 326 IAC 10-4-2(15)(B) and 326 IAC 10-4-2(15)(C) and recommend the language of 326 IAC 10-4-2(15)(C) be changed to say "and produces electricity for sale under a firm contract to the electric grid". (NS)

Comment: We do not understand the rationale for the distinctions made between the provisions of 326 IAC 10-4-2(24)(A), 326 IAC 10-4-2(24)(B) and 326 IAC 10-4-2(24)(C) and recommend the language of 326 IAC 10-4-2(24)(C)(i) and (ii) be changed to say "producing electricity for sale under a firm contract to the electric grid". (NS)

Response: U.S. EPA promulgated these definitions under the Section 126 rule. The definitions are intended to more clearly define the units that U.S. EPA sought to regulate under the SIP call and the Section 126 rule. By deleting certain dates, IDEM could make some units subject to this rule, even though U.S. EPA did not include them during the rule development. There was concern with the possible deregulation of the electricity generating system that new sources would seek to circumvent the rules by installing large combustion units serving small, less than twenty-five (25) megawatt generators. There has also been increased cogeneration projects that U.S. EPA believed should be subject to the rule. Units commencing operation after a certain year, serving generators less than twenty-five (25) megawatts and having heat input capacity over the threshold, were considered by U.S. EPA to be large nonEGUs under the Section 126 rule.

Comment: The definition of "source" is too vague and language should be included to clarify that separate corporations on-site are not part of the same source. (III)

Response: The definition of "source" is the same as the "source" definition under 40 CFR 72.2 and does not appear to be inconsistent with the definition of "stationary source" in other state and federal rules. It is important that there be consistency in definitions among the states in the trading program so that U.S. EPA can administer the program properly.

Comment: We believe that the definition of "commence commercial operation" should be changed. A unit should not be deemed to have begun commercial operation during the period of testing prior to beginning normal operation. The IDEM permitting rules acknowledge the need for start up testing prior to normal operation and include relief from certain requirements during the period of

bringing the unit into commercial operation. Construction permits also acknowledge this unique time when the emission device is in the final phases of construction prior to beginning normal commercial operations. Therefore, we recommend the language "including test generation" be deleted from this definition. Similarly, the term "generate electricity for sale or use" should be deleted from the definition. The "for use" term is too broad and could be misinterpreted to inappropriately trip a emission source into "commercial operation" upon generation of electricity for use internal to the operation of the emission source (machine). Similarly, the term "generate electricity for sale" is too broad and should be changed to limit the provision to "the generation of electricity for sale to the electric grid". (NS)

Comment: The definition of "commence operation" should be modified to exclude the period of testing prior to the beginning of normal operation. (NS)

Response: The suggested changes could have implications on applicability determinations and timing requirements under the rule. IDEM has consulted with U.S. EPA concerning this issue and it is U.S. EPA's position that the definitions should include "test generation" because NO_x emissions that must be accounted for occur during these times.

Comment: Because this rule is intended to be in place only during the ozone control period, we believe that the "maximum design heat input" should be based on the maximum design heat input that is achievable during the weather conditions of the ozone control period and exclude any values based on conditions that are not representative of the ozone control period. (NS)

Comment: Similar to the above comment for 326 IAC 10-4-2(26), the "maximum potential hourly heat input" should not be based on conditions that are not representative of the ozone control period.

Comment: We appreciate the IDEM's recognition of the necessity of and inclusion of the exemptions during periods of start up, shut down and upsets. However, because this rule is intended to only be applicable during the ozone control period, we suggest that IDEM add the provision that "Maximum potential NO_x emission rate" be limited to the operating conditions only during the ozone control period, excluding the start up, shut down and upset periods. It would be inappropriate to determine the maximum potential NO_x emission rate (to be used for the ozone control period only) based on operating characteristics that are not achievable during the ozone control period.

Comment: Several of the definitions relate to the parameters used to calculate a NOx emission rate absent monitoring data. Instead of specifying definitions for parameters to be utilized in computations that may unfairly overestimate the emissions, we believe that the IDEM should instead include rule provisions that allow for data substitution, as is allowed in the U.S. EPA's Acid Rain program.

Comment: As expressed in our comment above, we believe that the definition of this parameter should be limited to the "maximum rated hourly heat input" that is achievable only during the ozone control period. An hourly heat input that is achievable during winter conditions should not be

used for the summer ozone control period. (NS)

Comment: As previously stated, we believe that because this rule is applicable only during the ozone control period, the parameters that are temperature dependent should be acknowledged and only included as such in the rule. Therefore, the "nameplate capacity", in reference to the maximum electrical generating output, should only be the electrical generating output that is capable of being achieved during the particular operating period in question. (NS)

Response: IDEM has discussed the suggested changes with U.S. EPA and U.S. EPA has indicated that the definitions should remain as is. It is especially important to have language consistent with other states in the regional trading program.

Comment: We believe that if 326 IAC 10-4-2(31) is necessary to define, that the averaging period to which the emission limit applies is integral to fairly represent the emission limitations and not artificially and inappropriately increase the stringency of the source's emission limit. Therefore, we recommend that the phrase "regardless of the averaging period to which the emissions limitation applies" should be deleted. (NS)

Response: If the intent is to convert an emission limitation so that it is greater than the published emission limitation, and therefore, receive a larger allocation, IDEM disagrees. This would be inconsistent with other changes that require an allocation based on the more stringent emission rate.

Comment: 326 IAC 10-4-2(46) may need further clarification or modification with respect to the NO_x trading program depending upon the treatment of the Section 126 sources and the outcome of the pending litigation. (NS)

Response: IDEM has revised the language of the rule to provide for a smooth transition for Section 126 sources to the state NO_x rule. Changes to this definition do not appear to be necessary at this time.

Comment: It is inappropriate to characterize and define a purchaser of power from a NO_x budget unit as an owner under 326 IAC 10-4-2(52)(C). The purchaser of power from a NOx budget unit, even if it is a life-of-the-unit, firm power contractual arrangement, is not the owner of the unit and not necessarily able to exert any control on the operation of the NOx budget unit or control its emissions. To include a purchaser of power from a NOx budget unit as an owner inappropriately assigns to such a person authority and responsibility that does not exist. (NS)

Response: IDEM understands the concern. Discussions with U.S. EPA indicate that they do believe that a "purchaser" can exert control and the definition should not be changed.

Comment: The definition of ozone control period should be examined carefully for use given the court extension of the compliance deadline to May 31, 2004. For simplicity, we recommend that

the definition be modified to differentiate the ozone control period in the year 2004 from subsequent years. This is especially important for the compliance language included in the definition of "ton" or "tonnage" under 326 IAC 10-4-2(62) and elsewhere throughout the rule. (NS)

Response: IDEM agrees and will make the necessary changes.

Comment: The use of the phrase "other specified time period" in 326 IAC 10-4-2(65) raises concerns regarding potential inappropriate applicability to periods outside of the ozone control period. We note that IDEM is careful to include the term "in any ozone control period" when referring to the total or gross output of a unit. Believing that it is the intent of IDEM to only include the time periods during the ozone control period, we suggest IDEM change the language "…period, or other specified time period, produced…" to " …other specified time period during the ozone control period, produced…". (NS)

Comment: The language under 326 IAC 10-4-2(65)(B) should be revised to include "pounds of steam at the total steam pressure (psia). (III)

Response: IDEM has reviewed the definition and the rule language. This definition does not appear in the rule and should be deleted.

Section 126 Rule

Comment: The inclusion of an exemption for sources affected by the Section 126 rule is supported. U.S. EPA initially proposed that the NO_x SIP call and the Section 126 rules as companion rules to implement significant NO_x reductions. Only in the event a state SIP revision proved inadequate would the federal Section 126 rule become effective. U.S. EPA has altered this proposal and has concluded that unless a state adopts a rule that includes a May 1, 2003 compliance deadline, the Section 126 rule will stand. While supporting the exemption, IDEM should continue to discuss the situation with U.S. EPA and allow for the removal of the Section 126 rule with the submittal of an approvable SIP rule. (AEP) (IEUAWG) (HE) (IKEC) (CIN) (NS)

Comment: IDEM should include the federal 126 rulemaking in this rule and administer that program along with this rule. (IMPA)

Comment: Sources affected by the Section 126 rule should not be exempt from this rule beginning in 2004. If there is an issue with the May 31, 2004 deadline, this date can be moved to May 1, 2004. (VCDH)

Response: IDEM is committed to a smooth transition for Section 126 sources to the state NO_x rule and has included language that would make the Section 126 sources subject to this rule on May 1, 2004. We will continue to discuss this approach with U.S. EPA.

Compliance Certifications

Comment: It is unclear why each unit must meet allocations as opposed to the source. Compliance should only have to be certified for the source, which would avoid the need to conduct trading among units within the source. (III)

Response: The trading program was established to achieve reductions from specific units and allocations are distributed to individual units consistent with the manner in which the Acid Rain program was developed. Because each unit receives a specific allocation, compliance must be certified for each unit. Even if source certification was allowed, sources would be "trading" among units for overall compliance.

Comment: The November 30th compliance certification date does not allow enough time to trade once the ozone season is complete and reallocations from set-asides known. Sources will be required to scramble to buy the last few tons to come into compliance within a narrow time frame. (III)

Response: The compliance certification date is established by U.S. EPA and U.S. EPA will be administering the program, not IDEM. It is unlikely that U.S. EPA would allow for various states to have different compliance certification dates. In addition, sources know how allowances are calculated and what is necessary for compliance. A source should generally know well in advance of the compliance certification date whether or not allowances will need to be purchased and there are other allowances available than just those reallocated at the end of the season.